

benefit as to prevent such infants from becoming idle paupers and a burthen to the community ; and therefore no law which provides for the preservation of their property, and the proper application of their estates to their maintenance and education, can be deemed an infringement of their rights.

An infant may, apparently, succeed to property which cannot, in strictness, be said to belong to him, because of the claims of others. The creditors of the ancestor from whom the estate descended, must be first paid before any part of it can be applied to the use of the infant heir. An act of Assembly which facilitates the application of such an estate to the payment of the debts of its late owner, merely gives to it its proper direction ; and therefore, instead of violating, affirms the right to it, as deduced from its deceased owner. Nor can any law which goes no further than to provide for the application of an infant's estate to his maintenance and education, be regarded as, in any respect, a violation of such infant's right of property. An infant is, in general, incompetent to contract ; but he may, by contract, bind himself for his maintenance and education ; and hence a legislative enactment, which facilitates such an application of his estate, co-operates with the infant's legally qualified right to contract, in discharge of a duty to himself, without trenching upon any of his rights.

The several tribunals of the judicial department of our government, have been framed and established with a view to the determination of matters in controversy between individuals. The Orphans Courts have been entrusted with authority to appoint guardians for infants ; and to see that such guardians perform their duty as prescribed by law ; and the Court of Chancery has been invested with a similar and more extensive power in regard to the care of infants and their estates. (*p*) But neither of those courts, nor any other of the tribunals of the republic have been, or can constitutionally be clothed with a discretionary power to sell and dispose of the property of any one, infant or adult, merely for his own interest and advantage, apart from the maintenance and education of such infant owner. Such a power is not judicial in its nature ; and therefore, cannot be conferred upon or exercised by any branch of the judicial department.

To coerce the payment of debts, and to make sale of property for that purpose ; or to provide for, and enforce the application of